

By Article 60, the transfer of enemy goods to a non-enemy person during the course of a voyage after the outbreak of war, is invalid so far as the rights of captors are concerned; that is, they retain their enemy character until they reach their destination. This provision is different from that relating to the transfer of ships after the outbreak of war in that it pronounces absolutely the invalidity of transfers of goods made *in transitu*, whereas in the case of ships it creates only a presumption of invalidity which in some cases is rebuttable. This rule is also in accordance with the general practice and prize jurisprudence and is based upon considerations of justice and equity.

Sec. 329. Rules Embodied in Prize Regulations. While the Declaration of London left open the question of the test to be applied in determining the neutral or enemy character of the owner of goods, the majority of the belligerent powers had already promulgated before the outbreak of the war, or did so during the war, prize regulations which laid down the rule which they proposed to observe. Among those which made the nationality of the owner the sole or primary test were Germany,¹ France,² Italy,³ Japan,⁴ and Russia.⁵ Among those which, on the other hand, adopted the rule of domicile were China,⁶ Great Britain,⁷ and the United States.⁸ Roumania adopted the rule of domicile but at the same time applied the rule of nationality in the case of enemy subjects domiciled in neutral territory.⁹ The prize regulations of Austria-Hungary did not lay down a definite rule for the determination of the question.¹⁰

It should be observed that during the World War both Great Britain and France departed from their traditional rules, in their legislation respecting trade with the enemy. Thus France, where nationality was regarded as the primary test for the de-

¹ Prize Code, Sec. 20 b. But in case the owner had no nationality or possessed neutral as well as enemy nationality, the character of the goods were to be determined by the domicile of the owner.

² Instructions (revision of 1916), Art. 28. Nationality adopted as the sole test.

³ Rules of March 25, 1917, Art. 21. Nationality the sole test.

⁴ Law of 1914 relative to naval war, Art. 21. But domicile was made the test in case of double nationality. In adopting the criterion of nationality Japan departed from the principle formerly maintained by her.

⁵ Prize regulations of 1895 (Art. 10); in effect during the World War.

⁶ Regulations governing capture at sea, Article 4.

⁷ The British government did not issue a code of prize regulations but in various Orders in Council, notably that of March 15, 1915, relative to reprisals against Germany, the traditional English rule of domicile was laid down.

⁸ Instructions, 1917, Art. 59. "Commercial" domicile of the owner.

⁹ Cod., Art. 53. Cited by Verzijl, p. 439.

¹⁰ Dienstbuch, Art. 45.